

The Virginia Indigent Defense Commission
Commission Meeting
1604 Santa Rosa Road, Suite 200
Richmond VA 23229
September 20, 2012

Judge Alan Rosenblatt (ret.) called the meeting to order at 11:10am. Other Commission members in attendance were Steve Benjamin, John Douglass, Maria Jankowski, Kristen Howard, David Lett, Carmen Williams, Senator Richard Stuart, David Walker, Kristi Wooten, and Judge Hanson. Administrative staff included Executive Director, David Johnson, Deputy Director, DJ Geiger, and Administrative Assistant, Diane Pearson.

Judge Rosenblatt introduced and welcomed Senator Stuart, who has been designated by Senator Normant to be his representative on the VIDC. Senator Stuart accepted court appointed cases for fifteen years, is a member of the Senate Courts of Justice Committee, and represents parts of King George, Prince William, Spotsylvania, Stafford, and Westmoreland Counties.

Quorum requirements have been met.

Mr. Johnson said there are some informational documents with the meeting materials. One document is the Executive Director's Memo that was created for agency managers. The second is an article from the NACDL Champion that highlights two assistant public defenders; one is Antoinette Tucker who works for our Franklin Public Defender Office. The article is about her commitment to her clients and the great job she is doing. The article is written by Bonnie Hoffman who is the Deputy Public Defender in our Leesburg Office.

The first order of business is to approve the agenda.

Ms. Jankowski moved to approve the meeting agenda. Judge Hanson seconded the motion. The motion carried.

The second order of business is approval of the June 14, 2012 minutes.

Judge Hanson made a motion to waive the reading of and approve the minutes. Senator Stuart seconded the motion. The motion carried.

The next item on the agenda is the budget update.

Ms. Geiger referred the members to the Budget Tab of their binders and said that FY 2012 ended June 30th. Our ending balance was \$262,000. The FY 2011 ending balance was

\$1.3 million. This is a significant difference and is due to the elimination of the hiring delay, unfreezing the frozen positions, and prepaying some rents. We expect that if the interpretation of the language in the Appropriations Act remains the same the money will be returned to us. The General Assembly could also vote to keep a portion or the entire amount during the 2013 session.

In the materials, we have a Budget Status Report. The agency has four program areas for budgeting purposes. They are:

Program Area 32701 - Criminal Indigent Defense Services which covers the 25 public defender offices;

Program Area 32702 - Capital Indigent Defense Services which covers the four capital defender offices;

Program Area 32703 - Legal Defense Regulatory Services which covers Standards of Practice Enforcement; and

Program Area 32722 - Administrative Services which includes IT, HR, Training, and anything related to administration

We expend money in six broad categories. These expenditure categories are established by the Department of Planning and Budget. They include:

1100 Personnel Services – Salaries, Wages, Fringe Benefits

1200 Contractual Services – Travel, Telecommunications, Broadband, Postage

1300 Supplies and Materials – Office Supplies, Gasoline, Toner

1400 Transfer Payments – Unemployment Compensation Payments

1500 Continuous Charges – Building & Equipment Leases, Utilities, State Library File Storage, Workers Compensation

2200 Equipment – IT Equipment and Reference Materials

We have given you the budgeted amount in the first column, the actual expenditures from July and August, the year to date expenditures, and the remaining budget.

We are on track and spending what was budgeted or below except for three items. One item is salaries. There are three payrolls in July. This will balance out the end of the fiscal year because there is one payroll in June. The second item is rent which is low because we prepaid three months of FY13 rent in FY12 in order to balance the FY13 proposed budget. The third item is in Administrative Services in the 1400 Series. We are running over budget because we have two unemployment compensation claims that were not anticipated.

Ms. Geiger continued with the turnover and vacancy savings. When a position is vacated, until it is filled, money not used for salary or benefits creates savings. We try to project what that savings is going to be and budget accordingly.

We budgeted an average of \$62,000 in turnover and vacancy per month for a total of \$744,000 for the year. This was based on prior years. At one point we were generating about \$2 million per year. That dropped to \$1.3 million last year so we reduced our projection. Even at the lower projected rate, we are actually running below projections. We will continue to track it. We are not generating the turnover and vacancy like we were four or five years ago.

There was discussion regarding the job market and the retention bonus period. The bonus retention period ended in May 2012 and is not affecting current turnover rates. We had 27% in turnover and vacancy in 2006 and now it is 13%.

Ms. Geiger said the bonus provided in the Appropriations Act for all state employees was approved with a couple requirements:

1. An employee must have been employed as of April 1, 2012 as a classified employee. Anyone hired after that date is not eligible. It is a three percent bonus that will be included in the December 1st paycheck and is subject to taxes, etc.
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An employee has to have been rated in the last performance evaluation as a “contributor” in the Executive Branch, which translates to a rating of “Meets Expectations” for our agency.

There will be a central appropriations adjustment made to our budget in order to pay the bonus amounts. We anticipate this will be about \$800,000 to \$850,000 depending on who meets the qualifications.

There was discussion about employees who do not meet the qualifications. Managers are discouraged from giving a good performance evaluation to someone who is not doing a good job just so they can get a bonus.

The next item on the agenda is the annual report.

Ms. Geiger said there is an additional chart that compares the method of payment in the different states and generally how much court appointed counsel receives. Some states have gone to issuing Requests for Proposals (RFP's) which results in the award of a contract. This makes getting specific amounts paid to court appointed counsel difficult.

One of our goals in the strategic plan is to increase training. The annual report showcases some of our training priorities.

Page 10 we added a reference to the applicable Standards of Practice into the materials provided for each of our training programs. They are also highlighted by speakers.

Pages 11 through 13 highlight the major trainings that we conducted. These included: the Annual Public Defender Conference, the Annual Trial Skills Boot Camp, the Appellate Practice Boot Camp, and Management Training for all supervising attorneys. We continue to partner with other groups on programs as well, including the 17th annual Robert E. Shepherd, Jr. Juvenile Law and Education Conference.

There was discussion regarding the Annual Public Defender Conference. Mr. Walker complimented staff on the conference held earlier this month. He said it was one of the best CLE's he has ever attended. The material and the presentations were great. His observation was that the attorneys in attendance were attentive.

Ms. Geiger said at the bottom of Page 9 of the Annual Report is a chart containing the number of attorneys certified by specific case types. There is a clear increase in every category.

Page 17 is reference to turnover. The turnover has been leveling off the last three years. We are at 13.4 percent this year which is far from the peak of 27 percent in 2006.

Overall our caseloads have increased three percent. We had 102,333 new cases this year. We do not track the rollover cases from the previous year. This is by client not by charge so if a client has ten charges, it is one case.

There was discussion regarding tracking clients, charges, and individual attorney caseloads.

Ms. Geiger said on Page 19 the chart lists the actual number of cases per attorney in each office. The overall system average is 328 cases (mix caseloads) per attorney.

Mr. Johnson added that this varies from one jurisdiction to another. Some jurisdictions might be heavy in misdemeanors. We have a rough idea of how much each office is doing.

Ms. Geiger continued that the highest caseload this year was in Danville at 402 cases per attorney. The lowest was in Arlington at 173.

There was a lengthy discussion about how many cases each attorney is handling at one time and the Caseload Study that was completed several years ago which provided a general proposed caseload. A general number is 320-325 per attorney a year. Some attorneys handle 100 cases at a time. Senator Stuart voiced concerns about the ability of attorneys to adequately represent that many clients at one time.

Our funds come from the General Assembly general fund. Court appointed counsel is funded by the Supreme Court criminal fund.

There was discussion about the need for additional positions and the ability to control caseloads by working with the courts. Staff will look at additional ways to provide information to the Commission on individual caseloads.

Ms. Jankowski made a motion approving the Annual Report. Senator Stuart seconded the motion. The motion carried.

The next item on the agenda is training.

Mr. Johnson said we emphasized training this year. Jae K. Davenport has filled the long vacant Standards of Practice Attorney position. She was an attorney in our Franklin Office for several years and has been a terrific addition to our training development efforts. The new Sr. Appellate Coordinator and Legal Resource Attorney also have provided key assistance in training. We have a dynamic group working together. Our HR Director has taken over the logistical part of training.

The Trial Skills Boot Camp held in July was the best one we have had with a series of lectures followed by workshops and culminating on the last day with mock jury trials. There was a total of 275 people involved in the mock jury trials most of whom were volunteers. We retained the component added last year where the attorneys were advised that they lost their case and had to appeal. They will be submitting their petitions soon. We are hoping for defaults so we can take them through the whole process. This is a great test for the appellate supervisors. They will be graded on the petitions, and there will be regional trainings. The regional trainings will be held in January in Richmond, Roanoke, Fairfax, and Virginia Beach, during which each participant will do a mock panel argument.

The Annual Conference was held in Virginia Beach this year. We provided two plenary sessions and fifteen breakout sessions. Our folks in the administrative office did a great job lining up the speakers and doing all of the preparations.

In December we will be hosting an Office Manager training. In January we will have our second Management Conference for our supervising attorneys.

Every month we hold certification trainings in the administrative office. We have an arrangement with the local bar association in the southwestern part of the state for certification trainings to be held there as well.

In February the NACDL will have a conference in Washington DC. The emphasis will be on forensics. We anticipate we will have at least fifty attorneys attending.

There was discussion regarding the annual meeting of the American Academy of Forensic Sciences that is held at the same time as the NACDL conference. Mr. Benjamin said that the first 200 registrants will receive a badge for free admission to the academy presentation. This will give them access to the academy sessions and the exhibition hall. This will be a

great opportunity to sample the different presentations and to network with all of the experts in attendance.

The next item on the agenda is the informational items.

Mr. Johnson said that some of our offices are in big spaces in old buildings. The Commonwealth has developed standardized office space allowances. When the Norfolk Public Defender's office lease was ending, we did an RFP for office space. We think this got the attention of the landlord who is now working to reduce the office space from two floors to one. The reconfiguration will save us \$47,000 a year in rent. The space will also be more functional for that office.

The next item on the agenda is the IT update.

Ms. Geiger said our financial system (IDSS) is out of support. We are currently using it under an exception from the Virginia Information Technology Agency (VITA). Our Budget and Finance Director, Jewell Hudson, suggested we move to the state's system, CARS, which is free for state agencies. She is implementing a plan for the transition by January 31, 2013. This will require training the administrative staff.

A few agencies have been developing a system called Cardinal that will eventually replace CARS. When it comes time to move the agencies using CARS to Cardinal, it will be an easier transition from CARS than if we have our own independent system.

Aces, the attorney certification database we use for all of our court appointed counsel, PDCIS, our case management system, and the Authentication/Secure Access Portal, all are programs currently being provided under state contract by Virginia Interactive or Virginia.gov. In the most recent RFP process issued by VITA, Virginia Interactive lost the bid to renew the contract. As a result, we have to move all of these systems to other vendors.

We looked at the services and contracts of the vendors who were selected under the RFP. The price estimate we received to move and host our website was approximately \$30,000. We then contacted Google, who is our current email provider. They told us that under our current service with them, we have domain sites that can act as a website. The price for a separate site is approximately \$250 per year. We are working with one of their consultants who used to be with the Arizona Attorney General's office and is familiar with lawyers and state agencies.

The ACeS system works through our website. Attorneys who want to be certified to accept court appointed work can now apply and manage their accounts on line.

We can use Google Apps for ACeS. We are waiting for a quote.

Our case management system is more complicated. Each of our offices has its own physical server that holds the data for all of the cases. The server is backed up nightly to the administrative office. We are moving data on line so staff and attorneys will be able to access that as a web enabled application. Virginia.gov was converting the data and developing a platform for us. They were in the final stages and were about to start converting over to this new system, but they lost the contract so we had to apply for an extension until June 2013. The extension was granted.

We are still looking for a service to house the authentication/access portal. The access portal is where users log in and are authenticated. Once authenticated, they can access email, case management, and eventually their documents.

We are also looking at server replacement options. In the last three months our field office servers have been failing on a weekly basis. We are exploring the move to cloud storage. Eliminating the physical servers reduces the workload on the IT Department because they no longer have to service and maintain them.

We are looking at options for a desktop refresh within this fiscal year. Funding was provided in the budget the Commission approved in June.

VITA is about to issue new IT security requirements. The overall standard is changing and they are also doing a mobile device management standard that we will need to comply with. We are not sure what will be in it, but we need to be able to remotely wipe devices accessing sensitive information when they are lost or stolen. There will be a lot of analysis going into the desktop replacement.

Every agency is required to designate an Information Security Officer (ISO). That person is responsible for making sure the agency complies with IT Security standards and for implementing and maintaining cyber security awareness training. VITA decided this year that they want employees with IT backgrounds who are certified in the IT field to serve as ISO's. This will mean that our agency will need to utilize a part time position or explore the possibility of a shared position with another smaller agency to meet that requirement.

CLOSED SESSION

Judge Hanson moved that the Virginia Indigent Defense Commission convene in closed session to discuss personnel issues pursuant to the personnel exemption contained in §2.2-3711(A) (1) of the Code of Virginia.

This meeting will be attended only by members of the Commission, however, pursuant to §2.2-3712 (F) of the Code of Virginia, the Commission also requests the attendance of the Executive Director, the Deputy Director, and the Human Resources Director because it is

reasonable to believe that their presence will aid the Commission in its consideration of the matters which are the subject of the closed session.

Mr. Benjamin seconded the motion. The motion carried.

Mr. Benjamin had to leave the meeting prior to the conclusion of the closed session.

After reconvening into open session, Judge Hanson moved for a roll call vote asking that each member remaining certify that to the best of his or her knowledge, during closed session, the Commission heard, discussed, or considered only public business matters that were lawfully exempted from open meeting requirements under the Freedom of Information Act.

Each member so certified.

David Baugh joined the meeting.

Mr. Baugh said that he has never seen the actual allegations. He explained that he wrote his explanation and then met with Ms. Amy Williams and she explained a few things to him. He said that he wanted to point out that he never directed a comment to anyone concerning their physical attributes, certainly nothing sexual, nothing religious, nothing regarding their lifestyle or gender orientation. He said he wanted to point out specifically that the other two lawyers in his office, and he is sure the Commission will see that response in Mrs. Cardwell's letter as well, one lawyer his deputy and one his assistant. We sit side by side when we work.

Doug Wham is the deputy and is excellent at DNA and he is excellent on psychiatric material. He is the deputy, and that is his skill. When he first hired Mr. Wham, Mr. Baugh wanted him to be the substitute when Mr. Baugh could not be there, but he is not what Mr. Baugh would call a serious trial lawyer, but he does make a tremendous contribution.

He said that he calls Jessica Bulos his "book man". She came from the Appellate section when that office was dissolved. She does most drafting. We try to have an appellate person as a member of the trial team to plant things in the record so we don't make errors and harvest errors that judges make. Jessica has a problem, and she would admit it that she was diagnosed when she was younger that when she thinks out an issue, she has to do it orally. She can't just think of an issue and logically progress and come to a conclusion. She has to say if this happens, then this happens, etc. Sometimes when this is going on to some of the other people in the room it sounds a little ditzzy. She is a brilliant writer, however, will never be a trial lawyer. However, she contributes a lot.

Sometimes Doug Wham and Jessica Bulos interrupt each other a lot and very often in meetings, two or three times, Mr. Baugh has to calm them down. Mr. Baugh has to remind them to stop picking on each other, that they have to get these things out. Other attorneys who have been in these meetings have commented on that also.

Mr. Baugh said that he could talk about other things but isn't sure how he can address them because he doesn't know about them.

He said that his office has a pretty powerful team when it comes to representing indigent capital defendants. We have no cases going to trial, unfortunately. We have been able to resolve several capital cases with much less than death, in most cases less than life.

One thing he thought of yesterday was about his language. Over six months ago he realized his language had gotten a little blue so he said he wanted a curse jar on the conference room table. Whenever anyone curses they put money in the jar, and within fifteen minutes Andrena Graves, the office manager, had a butter tin with a slit cut in it that she put on the table. And he said about six months ago he made quite a few contributions to the curse jar. They have not been made as often as they used to be. In fact John Thornbro once made a contribution to the curse jar.

He has not seen these allegations. He believes he knows what motivated them. He believes he made a mistake when he hired that young lawyer. He was hiring her, even though she was an assistant, as the other trial lawyer in the office. She came from a PD's office. She appeared to have a lot of trial experience. He later found out that she didn't have the trial experience that she said she had. One time, just before he went on vacation, she made a statement that in the seven to eight years that she'd been a public defender she never tried a case for the defendant unless she thought they were innocent. Something like that. Mr. Baugh told her that that's not the way to practice law. You defend all people. He said the discussion got very heated. He said he told her that if he was her public defender he would have fired her ass. He told her that is not the attitude to have, and she left upset, and he left upset.

He went on vacation the next day and when he got back from vacation, he got a phone call from Dave asking him to come over at 3:30. Mr. Baugh met with Ms. Williams and Mr. Johnson, and Mr. Johnson showed him a letter saying the he was suspended, and that was it. He asked if he could see the allegations and was told he can't. He since found out why he is not allowed to see them, which is fine.

Mr. Baugh mentioned that he does not know everyone at this table. He has been practicing law for a long time. He doesn't think he could have pulled off the accolades or gotten the reputation he has doing the things that are in that letter. Couldn't do it.

We have a set meeting every week with everybody, and when he says everybody it's not just the lawyers, the investigators are there, and the mitigation person is there. Sometimes the office manager will leave if there is nothing pertaining to the administration of the office, but normally she stays in there too. He has never heard of anything like this. For that reason he does not know what the Commission will do. He understands that the law is rather specific. He said he talked to a lawyer about this but how do you handle something like this? What

are your rights? He said he is available to answer questions, any questions, if you want to ask specific questions, as long as you don't violate confidentiality, he's happy to answer them.

He said that this might ruin his chances but when he first got this letter, he was angry, but he puffed his chest out and said he's not going to do this. He said Mrs. Cardwell and Mr. Cooley reminded him that just because he works for the government does not mean that you do not have the same obligation to your clients as when you are in private practice, and that he must make every effort to stay on and be their lawyer as long as he can. And he believes that.

He said that his office has four cases pending and two of those could very likely go to trial. Mr. Baugh indicated that Mrs. Cardwell, Mr. Cooley, and Mr. Thornbro commented to him that he might be able to keep those clients from dying, and that's important.

That's it. Thank you for listening.

There was no further discussion.

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Ms. Jankowski seconded the motion. The motion carried.

After reconvening into open session, Judge Hanson moved for a roll call vote asking that each member certify that to the best of his or her knowledge, during closed session, the Commission heard, discussed, or considered only public business matters that were lawfully exempted from open meeting requirements under the Freedom of Information Act.

Each member so certified.

Mr. Walker made a motion that David Baugh remain on administrative leave and that his employment be terminated as of 5:00 p.m. tomorrow, September 21, 2012. Ms. Wooten seconded the motion. The motion carried.

Ms. Geiger said that we may have some legislative requests or proposals. There is a deadline for pre-filing legislative bills of December 3rd. The next Commission meeting is December 6th.

We will need to secure patrons earlier rather than later. Anyone who is interested in being on the Executive Committee and is currently not on is welcome to attend.

We will be scheduling the 2013 Commission meetings during the December 6th Commission meeting.

Judge Rosenblatt thanked everyone for attending and said it was, without a doubt, the most difficult meeting he has ever attended.

There was no further business.

Mr. Walker made a motion to adjourn. Ms. Jankowski seconded the motion. The motion carried.

The meeting adjourned at 1:55pm

Respectfully Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director